IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No.1183 of 1993
Date of Decision:- 17 .11.2006

Basawa Singh ....Appellant.

through
Mr.Jai Bhagwan, Advocate.

vs.

Faqir Singh & ors. ....Respondents

through
Mr.K.S.Sidhu, Advocate.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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1.Whether Reporters of local papers may be allowed to see the judgment?
2.To be referred to the Reporters or not?
3.Whether the judgment should be reported in the Digest?

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SURYA KANT, J.

This appeal is directed against the award dated 3.5.1993 passed by the Motor Accidents Claims Tribunal, Patiala whereby the claim petition filed by respondent No.1 (Faqir Singh) has been partly allowed against the appellant and he has been awarded a compensation of Rs.72,000/- along with interest at the rate of 12% per annum from the date of filing of the claim petition.

[2] As per the allegations of the respondent-claimant, on 3.4.1988 he was travelling from Ludhiana to Patiala in bus bearing registration No.PJG-7142 belonging to Pepsu Roadways Transport Corporation (respondent No.5) driven by respondent No.6 (Bhag Singh). When the bus reached near village Chaurwala, Police Station Mulepur, a truck bearing

registration No.PUR-7735 being driven by respondent No.2 (Bhupinder Singh) in a rash and negligent manner came from the opposite side and dashed into the right side of the bus towards its emergency door, corresponding to the place where the respondent-claimant was seated inside the bus, along with some other passengers.

[3] As a result of this accident, the right arm of the respondent-claimant was chopped off and his severed limb got entangled with the truck. The driver of the bus-Bhag Singh who had tried his best to save the bus from the accident by taking it to extreme left side on the kuchha berm, then stopped the bus and chased the offending truck by taking lift on a scooter and noted down its registration number. Bhag Singh, driver thereafter got an F.I.R. lodged about this accident at the police station, Mulepur. The accident was witnessed by 25/30 passengers as well as bus Conductor Ashok Kumar and one Ranjit Singh of Village Manvi. The respondent-claimant who became unconscious was rushed to Rajindra Hospital, Patiala where he was operated upon and after being kept in the Orthopaedics Unit, he was discharged 20.5.1988. At that time, the respondent-claimant was about 34 years of age and was serving as bus conductor in the Pepsu Roadways Transport Corporation, Ludhiana Depot. On account of various kinds of losses etc. suffered by him, the respondent-claimant sought a compensation of Rs.6 lacs. The appellant was initially proceeded ex parte and an ex parte award was also passed. The same was, however, set aside on an application moved by him. Thereafter, he filed the written statement and contested the claim.

[4] After answering Issues No.1, 2 and 3 in favour of the respondent-claimant, the learned Tribunal has awarded him a compensation

of Rs.72,000/-. The entire amount of compensation has been directed to be paid by the appellant (owner of the truck) on the ground that the accident in question was caused due to rash and negligent driving of the truck driver.

[5] I have heard learned counsel for the parties and perused the records. It may be mentioned here that after listing of this appeal for final disposal, a fresh notice was issued to the respondent-claimant for the reason that the learned counsel earlier representing him had unfortunately expired. As per the office report, notice has been duly received by the respondent-claimant but he has chosen not to appear and contest this appeal.

[6] Various contentions have been raised by learned counsel for the appellant in order to establish that either the accident did not take place at all and the claim petition is totally false and frivolous and/or it was caused due to rash and negligent driving of the bus driver (Bhag Singh) respondent No.6 and in order to save his own colleague, the respondent-claimant in connivance with the bus driver, has filed the claim petition by concocting allegations against the truck driver.

[7] In order to draw any of these inferences, learned counsel for the appellant has highlighted the following circumstances:-

(i) According to the statement of bus driver (Bhag Singh-PW-5), the accident took place at 12.30 P.M. whereas according to Ashok Kumar-the bus conductor (PW-3) it took place at about 9.30 A.M.; (ii) The FIR, however, was got registered by Bhag Singh driver on the next day i.e. 4.4.1988 at 1.30 P.M.; (iii)Pertinently, Bhag Singh (PW-5) has deposed that immediate after the accident, he stopped the bus and chased the truck after taking a lift on a scooter passing thereby and noted down the registration number of the truck and soon after the occurrence, he went to the police

station, Mulepur and got the report Ex.PW-5/A lodged; (iv) the police station Mulepur is not more than 3 Kms. from the place of occurrence of the accident; (v) though according to the claimant as well as the driver and conductor of the bus (PW-3 &PW-5) there were 25 to 40 other passengers who were travelling in the bus at the time when the accident took place, however, none has been produced as a witness;(vi) according to the claimant and the bus driver, the truck dashed into the rear portion of the bus, however, no damage report of the bus has been produced on record.; (vii) no records pertaining to the repairs, if any, of the bus have also been produced though the bus being owned by a Government Corporation, it could not have been repaired in the workshop without a job card; (viii) interestingly, Bhag Singh-the driver of the bus, in his statement has deposed that he had merely informed the Adda Incharge and no information in writing was given by him to the PRTC Authorities regarding the accident or damage to the bus; (ix) Bhag Singh, the driver of the bus has admitted that he is a semi-literate person and could not read the truck number. He, however, has improved his version by saying that the truck number was noted down by the scooterist from whom he had taken the lift. However, neither the scooterist has been produced in witness box nor his particulars or of his scooter are known to Bhag Singh-driver or disclosed; (x) the only two witnesses produced by the claimant are the driver and conductor of the bus who are his own colleagues as the claimant and both of them are employees of PRTC; (xi) bus Conductor-Ashok Kumar (PW-3) in his statement states that the truck number was given to him after 3 days of the occurrence whereas Bhag Singh-the bus driver says that immediate after the accident he chased the truck and noted down its number; (xii) the respondent-claimant

(PW-6) has categorically admitted in his cross-examination that at the time of accident, his right arm was inside the bus and not outside. How could it be possible that his right arm would have been chopped off completely and would have been removed from the place of accident being entangled with the truck? (xiii) if the accident had taken place with such a severe impact that a part of the truck ripped off the rear part of the bus and severed the right arm of the respondent-claimant, then how is it possible that no other passenger in the bus received injuries in the accident?; (xiv) if it is assumed that the accident did take place then the only inference would be that the claimant while sitting in bus had kept his right arm outside the bus which might have been chopped off by any vehicle crossing the bus; (xv) in that case, the driver of the bus is also jointly and severally responsible for the accident in question as the claimant must have been sitting towards the driver side only and it was the duty of the driver to notice in the mirror that no passenger keeps any part of his body outside the bus which could endanger his own life and cause accident.

[8] On the other hand, Mr.Sidhu, learned counsel for the PRTC has argued that no allegations of rash or negligent driving have been made by the claimant against the bus driver. According to him the above-noticed contentions made by learned counsel for the appellant are based upon minor discrepancies in the statements of the claimant's witnesses who deposed after a long period.

[9] After giving my thoughtful consideration to the rival contentions raised by learned counsel for the appellant and of the PRTC, I am of the considered view that the fact that the respondent-claimant met with an accident in which his right arm was chopped off, is sufficiently

proved form the version of Dr.J.P.S.Walia (PW-4) who, at that time, was working as a Registrar in the Department of Orthopaedics, Rajindra Hospital, Patiala. From the records of the hospital, it stands established that the respondent-claimant was got admitted in the Rajindra Hospital on 3.4.1988 with right arm amputated and he was operated upon on that very day. The claimant was discharged from the hospital on 20.4.1988. As a result of the accident, the claimant suffered permanent partial disablement as certified by the Civil Surgeon, Patiala vide certificate Ex.AW-4/ 8.

[10] The question, however, arises as to whether or not the accident took place in the manner as suggested by the claimant or the driver and conductor of the bus No.PJG-7142.

[11] Learned counsel for the appellant for more than one good reasons has successfully caused dent in the claimant's story. If the claimant was sitting in the bus along with 40 odd passengers, it does not appeal to the senses that the truck injured the claimant only by chopping off his right arm that too when his right arm was well within the bus and no bruises were caused to any other passenger. In any case, it could not have happened without causing any damage to the bus. Both the vital pieces of evidence are conspicuously missing from the record. The manner in which contradictory statements have been made by the driver and the conductor of the bus or the claimant in respect of the time of accident, as to how the truck number was obtained or when was the F.I.R. got registered, does falsify, at least partly, the claimant's version.

[12] However, the fact remains that the claimant did suffer injuries in an accident. The manner in which the driver and conductor of the bus have overwhelmingly supported their colleague's claim clearly indicates

some kind of mutual understanding between them. It, thus, appears that in order to save his own colleagues from criminal prosecution or departmental action for causing the accident in which a lot of damage must have been caused to the bus, apart from severe injuries to him, that the claimant has come up with a half-baked truth and has twisted the turn of events.

[13] It is the claimant's own case, duly supported by the driver and conductor of the bus that at the time of accident he was travelling in the bus No.PJG-7142. The accident could not have taken place unless the claimant kept his right arm outside the bus. The delinquent truck appears to have come suddenly from the opposite direction and since both i.e. the bus and the truck drivers did not take care to keep enough space between the two vehicles while crossing each other, the right arm of the claimant got entangled between the two and due to impact of the force with which the truck must have struck against his arm, it was completely chopped off. Obviously, the accident did not cause any damage to the bus as the truck never struck against the rear portion of the bus. Had it been so, the authorities in the Corporation would have taken notice thereof which could cause some disciplinary action against Bhag Singh-the driver of the bus.

[14] From the above-stated discussion the only irresistible conclusion would be that the accident was a result of contributory negligence not only of the respondent-claimant himself but also of the bus and truck drivers both. It is held accordingly.

[15] Normally, in view of the findings returned above, one-third compensation is liable to be reduced on account of the contributory negligence of the claimant himself. However, having regard to the fact that the claimant has suffered permanent disability and not a huge amount of

compensation has been awarded to him, I am not inclined to reduce his actual entitlement.

[16] However, in view of the fact that the accident was caused due to contributory negligence of the truck and the bus drivers both, the appeal is partly allowed and the impugned award dated 3.5.1993 passed by the Motor Accidents Claims Tribunal, Patiala is modified to the extent that in addition to the appellant, respondent No.5, namely, Pepsu Roadways Transport Corporation i.e. the owner of the bus No.PJG-7142 is also jointly and severally liable to pay the compensation as awarded by the Tribunal. It is further held that the appellant and respondent No.5 shall be liable to pay the entire amount of compensation in equal shares. It is further directed that if the award dated 3-5-1993 has already been executed by the claimant against the appellant, the appellant shall be entitled to recover from respondent No.5-PRTC, 50% of the total compensation amount paid by him to the respondent-claimant.

[17] No order as to costs.

November 17, 2006 **(SURYA KANT)**
poonam **JUDGE**